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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Examine the Commission's post-2005 Energy Efficiency Policies, Programs, Evaluation, Measurement and Verification, and Related Issues.

Rulemaking 06-04-010  
(Filed April 13, 2006)

**ASSIGNED COMMISSIONER'S RULING DETERMINING  
NO NEED FOR EVIDENTIARY HEARINGS AND ESTABLISHING  
PROCEDURAL SCHEDULE FOR PHASE 1 ISSUES**

By ruling dated May 24, 2006, I established the general timeline for Phase 1 of this proceeding and deferred a final determination on the need for evidentiary hearings in Phase 1 until the completion of the workshop process. As described in that ruling, in Phase 1 the Commission will develop a shareholder risk/return incentive mechanism for energy efficiency consistent with the policy rules, performance basis and associated updating/true-up determinations adopted in Rulemaking (R.) 01-08-028 and related proceedings.

**No Need For Phase 1 Evidentiary Hearings**

Following the filing of Phase 1 proposals, Administrative Law Judge (ALJ) Gottstein led a three-day workshop on Phase 1 issues on June 26-28, 2006. I attended the final workshop session. ALJ Gottstein and I indicated at that time that evidentiary hearings would not be held, and instead, a continuation workshop was scheduled for July 18, 2006.

Today's ruling memorializes my determination that evidentiary hearings will not be required to resolve the issues in Phase 1.

## **Post-Workshop Comments and Procedural Schedule**

For the July 18, 2006 continuation workshop, the utilities<sup>1</sup> and interested parties were asked to further flesh out a shared-savings incentive mechanism for resource programs working with the Straw Proposal design concepts presented for discussion purposes during the June 26-28 workshop. In particular, they were asked to develop the design details of a mechanism at three different (high-medium-low) levels of potential earnings at target performance. For this purpose, the utilities and interested parties prepared summary tables to illustrate their proposed permutations of the Straw Proposal to reflect alternate earnings levels for discussion. Those summary tables, along with the Straw Proposal, are posted at [www.cpuc.ca.gov/static/energy/electric/energy+efficiency/rulemaking](http://www.cpuc.ca.gov/static/energy/electric/energy+efficiency/rulemaking).

To further develop the record, I am requesting that parties file written post-workshop comments by September 8, 2006 that address the following:

- (a) What should be the potential level of earnings (in \$ millions) for a shared-savings incentive mechanism at 100% of target performance (i.e., achievement of savings goals)? Interested parties that are presenting proposals that apply to all utilities should present these levels for each utility, as well as for the four utilities combined.
  - Clearly discuss the policy and/or theoretical basis for your answer. Explain all factors you considered in reaching your determinations. The discussion should enable the reader to clearly understand how you decided that the potential level of earnings under your proposed incentive mechanism is a reasonable recommendation.

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<sup>1</sup> "The utilities" refers collectively to Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company.

- During the workshop process, the utilities presented their methodology for developing “comparable earnings” levels for energy efficiency relative to supply-side alternatives (steel-in-the-ground and power purchases), as I directed in my May 24, 2006 scoping memo. At the workshops, there was some discussion of assumptions/methodological issues associated with those calculations, including the basis for imputing debt equivalence to power purchases, the choice of discount rate, the treatment of debt tax reduction and chosen approach to tax depreciation (in calculating rate base and equity), among others. If the Commission decides to utilize the utilities’ analysis of comparable earnings as a reference point for the evaluation of earnings potential under an energy efficiency incentive mechanism, present your views on the assumptions or methodology used by the utilities for this purpose, and what alternates you would propose, as appropriate.
- (b) What permutation of the Straw Proposal discussed at the July 18 workshop best corresponds to your views expressed under a) above? Specifically reference the permutation illustrated in the summary tables posted at [www.cpuc.ca.gov/static/energy/electric/energy+efficiency/rulemaking](http://www.cpuc.ca.gov/static/energy/electric/energy+efficiency/rulemaking). If you have made further clarifications or modifications to a permutation presented at that workshop, please so indicate.
- Discuss your recommended Straw Proposal permutation in terms of each design parameter (e.g., minimum performance standard (MPS), earnings/penalties curve and other parameters reviewed at the workshop and presented in the summary tables). Present your rationale for proposing specific design parameters, e.g., that the MPS be based on achieving each savings metric (GWh, MW, MMtherm) versus an averaging of those metrics, or other approaches to establishing the MPS.<sup>2</sup> Present the

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<sup>2</sup> As discussed by ALJ Gottstein at the workshop, parties should analyze this particular issue (averaging the savings metrics) with numerical examples, in presenting their positions.

- advantages of your approach for each design parameter, relative to others presented at the workshop, as well as the potential downsides that you considered.
- (Optional): Should the Commission consider a risk/return incentive mechanism outside any of the permutations discussed at the workshops (keying off the Straw Proposal or alternatives to it)? If so, be specific as to the design parameters you would recommend, and why, using the posted summary comparison tables and figures/charts as templates to present your response. (See below.)
- (c) Each party is responsible for preparing illustrative figures/charts of their recommended earnings/penalty curve and associated earnings/penalties under their preferred Straw Proposal permutation, using the formats presented at the June 26-28, 2006 workshops. These are available under the “charts” section for that workshop, posted on the webpage referenced below. Contact William Miller (see below) for assistance in obtaining an electronic template of the figures (“Figures 1-A and 1-B”) for your use.
- (d) The utilities and interested parties should also present and justify in their comments specific proposals for earnings claims/recovery and linkage to evaluation, measurement and verification (EM&V). The proposals should clearly describe the timing and recovery rate for earnings claims, how the performance earnings basis (PEB) for each claim is linked to EM&V results, the program year(s) covered for each pay out of earnings, how and when the MPS is established, and associated final true-up and payback provisions, as appropriate.
- To summarize your position, complete the summary tables presented at the July 18 workshop on these issues, which are also posted at the website address above. In addition:
    - Provide payout formulas and numerical examples to explain the mechanics of the proposal, under scenarios where the

MPS may not be met in one or more earnings claim – or at the final true-up stage.

- Explain (using numerical examples) what happens under your proposal at the final claim when the PEB is trued up with all *ex post* measurement conducted under the EM&V protocols (i.e., measure load impacts as well as number and type of measure installations and program costs). In particular, what do you propose if the earnings rate times the “trued-up” PEB is less than the amount of earnings already paid out under previous installments? What happens if the “trued-up” savings levels at the final earnings claim indicate that the cumulative MPS was not met for the program cycle, even though it was met for previous claims/individual program years? Discuss how your proposal is designed to mitigate the risks of these potential outcomes.
- (e) What “counts” under your proposed shared-savings mechanism? <sup>3</sup> Present your position on what program and portfolio costs/savings are counted towards the PEB, the treatment of Codes and Standards program savings/costs, savings from low-income energy efficiency programs, EM&V costs, etc. (See the list of issues presented on this topic under the “Summary of Risk-Return Proposals” table posted on the website). Provide a discussion of the reasons for your position on each of these design parameters.
- (f) How do you propose that the performance of non-resource programs (e.g., information/audits, emerging technologies) be handled for this program cycle in particular, or for future cycles? Discuss the proposals put forth in pre-workshop

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<sup>3</sup> As discussed at the workshop, the utilities will provide to the service list a specific listing of the programs and costs included in the shared-savings proposals they presented at the workshops, without delay. Each utility and interested party should then present their final proposed listing as an attachment to the post-workshop opening comments, so that the differences among them can be reflected in the Summary of Risk Return Proposals and in the summary tables 7 and 8B, discussed below.

comments, as well as others that may be explored informally during post-workshop meetings, as you consider this issue.

- (g) William Miller of Pacific Gas & Electric Company has volunteered to be the contact person for coordinating the preparation of summary documents of parties' proposals, as well as scheduling additional informal meetings prior to the filing of comments. As discussed at the July 18, 2006 workshop, these summary documents will be modeled after the summary materials presented and discussed during the workshops:
- Summary of Risk/Return Proposals by design parameter/issue and by party;
  - Table 7 comparison of shared-savings target earnings levels with avoided supply-side investment. As discussed at the July 18 workshop, the PEB used to illustrate the proposals for target earnings levels in this table should utilize the 2006 Update of natural gas avoided costs adopted in (D.) Decision 06-06-063. The PEB in this table should reflect the party's specific proposal as to what program savings and portfolio costs should be included under the mechanism (i.e., from Table 8-B discussed below).
  - Table 8 presentation of earnings/penalties at various levels of performance, as further refined at the July 18 workshop:
    - Table 8A: The PEB and associated earnings calculations presented in Table 8A should be standardized to include all energy efficiency portfolio costs (including all EM&V).
    - Table 8B: The PEB and associated earnings calculations presented in Table 8B should reflect the party's specific proposal on what costs are included. In all other respects, Tables 8A and 8B are identical.
    - Workpapers to these tables should show the earnings and penalty levels by proposed tier, but Tables 8A and 8B should "collapse" that information into a single column, by proposal.

- The earnings calculations in these tables should use the utilities' non-linear methodology for illustrating the PEB associated with different levels of savings goal achievement. These PEB numbers should also be updated for all utilities to reflect the recent update to avoided natural gas costs, per D.06-06-063. As directed in this ruling, the utilities shall provide these PEB numbers to the parties, so that a consistent set is used in the post-workshop comments and summary tables.
  - For the non-utility proposals, these tables should present potential earnings and penalty levels by each individual utility, as well as for the sum of all four utilities.
  - These tables should be extended to reflect a broader range (e.g., down to 0% of achieved savings) of performance. As discussed at the workshop, additional/alternate intervals of % achievements may be considered in compiling these tables, in order to more fully capture the MPS, caps and other design parameters of the proposals.
  - A separate table below the current one should also be developed to illustrate the "cost effectiveness guarantee" (and any associated cap) for those proposals that include one, using PEB as the metric of performance, rather than achieved savings.
- "Earnings Claims/Recovery and Linkages to EM&V" and "Proposed Earnings Recovery Schedule" documents to illustrate the alternative proposals on these issues. Numerical calculations that use the same MPS and trued-up values at each claim, but illustrate differences in earnings pay-out/recovery rate, etc. under the various proposals should also be presented in comparison format.
- (h) All parties filing comments are directed to send William Miller the information he needs to prepare these summary documents, at a schedule he will provide to the service list so that the summary documents can be filed on time (see

schedule below). He can be reached by phone at (415) 973-4911 and by email at [wcm2@pge.com](mailto:wcm2@pge.com).

After obtaining feedback from individual parties, PG&E shall file and serve the summary documents discussed above by September 15, 2006. Reply comments are due by September 29, 2006. ALJ Gottstein or Chris Villarreal of our Division of Strategic Planning may request additional information as needed to assist in the development of the record.

Post-workshop opening comments should address the issues discussed above and include fully developed shared-savings incentive mechanisms for Commission consideration. Reply comments should be limited to rebuttal of the material presented in opening comments, or to modification of a party's opening position(s) in direct response to the opening comments of other parties. Reply comments should not be utilized by a party to present an "opening position" in lieu of filing opening comments, or to introduce new positions or information that is not directly responsive to arguments or positions presented in opening comments.

I encourage the utilities and interested parties to continue to meet informally and to work collaboratively in addressing the Phase 1 issues in the development of post-workshop comments. By all accounts, the exchange of views and open consideration of alternatives during the workshops this summer was productive to all involved. Continuation of the dialog among interested stakeholders will, in my view, greatly assist parties in developing their final proposals and in identifying the key policy and design issues for Commission consideration.

### **Community Environmental Council's Petition to Intervene**

On May 22, 2006, the Community Environmental Council (Council) filed a petition to intervene in this proceeding. ALJ Gottstein approved the petition by electronic communication. Today's ruling memorializes the approval of Council's petition.

#### **IT IS RULED that:**

1. Evidentiary hearings are not required to address Phase 1 issues.
2. Post-workshop opening comments, as discussed herein, are due by September 8, 2006 and reply comments are due by September 29, 2006. The summary tables and charts discussed in this ruling shall be submitted by Pacific Gas and Electric Company by September 15, 2006.
3. Post-workshop opening comments shall address the issues discussed in this ruling and include fully developed shared-savings incentive mechanisms for Commission consideration. Reply comments are limited to rebuttal of the material presented in opening comments, or to modification of a party's opening position(s) in direct response to the opening comments of other parties. Reply comments are not to be utilized as an opportunity to present an "opening position" in lieu of filing opening comments, or to introduce new positions or information that is not directly responsive to arguments or positions presented in opening comments.
4. Within five days from the effective date of this ruling, the utilities shall provide to the service list a specific listing of the programs and costs included in the shared-savings proposals that each utility presented at the workshops.
5. By no later than August 21, 2006, the utilities shall submit the performance earnings basis numbers discussed in this ruling for the development of tables to

illustrate potential earnings and penalties under each proposed shared-savings mechanism.

6. All comments and submittals required by this ruling shall be filed at the Commission's Docket Office and served on the service list in this proceeding pursuant to the Electronic Service Protocols attached to the OIR and consistent with Rules 2.3 and 2.31. Hard copies shall also be served on ALJ Gottstein and the Assigned Commissioner, pursuant to those protocols.

7. The May 22, 2006 Petition to Intervene of Community Environmental Council is approved.

8. For good cause, ALJ Gottstein, ALJ Weissman or I may modify the due dates in this ruling.

Dated July 20, 2006, at San Francisco, California.

/s/ DIAN M. GRUENEICH

Dian M. Grueneich  
Assigned Commissioner

**INFORMATION REGARDING SERVICE**

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a copy of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the copy of the filed document is current as of today's date.

Dated July 20, 2006, at San Francisco, California.

/s/ ELIZABETH LEWIS  
Elizabeth Lewis

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Last Update on 14-JUL-2006 by: SMJ  
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